

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MADELINE L.

Claimant,

vs.

GOLDEN GATE REGIONAL CENTER,

Service Agency.

OAH Case No. 2007030531

DECISION

This matter was heard before Diane Schneider, Administrative Law Judge, State of California, Office of Administrative Hearings, in San Francisco, California on April 25, 2007.

Claimant, Madeline L., was represented by her father and mother.

Golden Gate Regional Center (GGRC), the service agency, was represented by Lisa Rosene, Chief, Social Work Services.

The matter was submitted for decision on April 25, 2007.

ISSUE

Must the service agency fund 10 hours per week of one-on-one Applied Behavioral Analysis (ABA) services?

FACTUAL FINDINGS

1. In a Notice of Proposed Action dated February 27, 2007, GGRC notified claimant that it would not fund 10 hours per week of discreet trial training services. On March 6, 2007, claimant appealed, and this hearing followed.

2. Claimant, who will be four years old in July 2007, lives with her parents and her younger sister. She became eligible for regional center services after being diagnosed with autism in November 2005. Claimant has significant developmental delays in a number of areas, including communication, social skills, self-help, and safety awareness.

3. Claimant received early intervention services through GGRC, including 30 hours per week of one-on-one ABA services from Stepping Stones Center for Autistic Spectrum Disorders, Inc. (Stepping Stones). According to GGRC Staff Psychologist Richard Boyd, ABA is an umbrella term that includes one-on-one behavioral intervention techniques with the child, such as discrete trial training and pivotal response training, as well as a parent training model. The parent training model, also known as behavioral consultation, trains parents to implement ABA behavioral techniques with their child at home. Stepping Stones is vendored by the GGRC to provide discrete trial training. It is not vendored by GGRC to provide behavioral consultation services.

4. Claimant began the program at Stepping Stones in May 2006, after switching from another ABA program. As set forth in Stepping Stones' Treatment Program Progress Report dated October 1, 2006, claimant's one-on-one ABA program includes discrete trial training, pivotal response training, incidental teaching and social skills training. Before claimant turned three years old, she was evaluated by Carol F. Slotnick, Ph.D. Slotnick was of the opinion that claimant should continue with her program at Stepping Stones because claimant was not ready for a classroom setting. Claimant's parents also thought she would be better served by continuing her one-on-one ABA program. Therefore, they decided to have claimant continue with the Stepping Stones program instead of attending public school.

5. GGRC funded the Stepping Stones program until August 27, 2006, one month past claimant's third birthday. GGRC personnel involved with claimant's case believed that after GGRC discontinued funding for Stepping Stones, claimant's parents were paying for the Stepping Stones program from their own funds. At the hearing, however, claimant's father testified that his health insurance provider was paying for the Stepping Stones program.

6. It is not clear from claimant's fair hearing request or the evidence adduced at the hearing, whether claimant wants GGRC to fund 10 hours of ABA services *in addition to* the 30 hours that she already receives from Stepping Stones, or whether she wants the service agency to fund 10 out of the 30 hours of services that claimant currently receives. The written communications from claimant's father to the service agency state that claimant wishes the service agency to fund 10 hours of one-on-one ABA services from Stepping Stones. A GGRC Interdisciplinary Team Review Worksheet, dated February 2, 2006, states that claimant's father wants GGRC to fund 10 hours per week of the services that claimant currently receives from Stepping Stones. At the hearing, however, claimant's father requested that GGRC fund 10 hours of one-on-one ABA therapy *in addition to* the 30 hours that claimant currently receives, for a total of 40 hours of one-on-one ABA services.

7. Claimant submitted a Treatment Program Progress Report from Stepping Stones dated October 1, 2006. The report recommended that claimant continue with her one-on-one ABA program at the rate of 30 hours per week. According to claimant's father, Stepping Stones completed a report regarding claimant in January 2007. Claimant's father did not offer that report into evidence at the hearing, nor did he provide it to GGRC. While claimant submitted a one-paragraph letter from Developmental Pediatrician Lalaine G. Dimagiba-Sebastian, M.D., F.A.A.P., stating that claimant needs continued one-on-one ABA therapy, the letter does not express any opinion regarding the number of hours that claimant needs.

8. The service agency presented expert testimony from Dr. Richard Boyd, and Dr. Michael Corley, GGRC Staff Psychologists. Much of their testimony centered around explaining the different types of treatment modalities provided to children with autism. They offered their opinions regarding the limitations of one-on-one discrete trial therapy and the benefits of using the parent training model, which teaches parents how to implement ABA behavioral techniques at home.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act (Act). (Welf. & Inst. Code, § 4500, et seq.)¹ Regional centers are charged with the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Act. (§ 4620, subd. (a).) The Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (§ 4501.)

While regional centers have a duty to provide a wide array of services and supports to consumers who qualify for services under the Act, they are also directed by the Legislature to provide the services in a cost-effective manner. (§ 4640.7, subd. (b).) Towards this end, regional centers are required to "identify and pursue all possible sources of funding" for services, including insurance providers who may be liable for the cost of services. (§ 4659, subd (a).)

In the instant case, if claimant is requesting that GGRC fund 10 out of the 30 hours of services that she currently receives from Stepping Stones, her request must be denied because her family's health insurance provider is already paying for these services. To require GGRC to fund services that are already being paid for by claimant's insurance provider would contravene the Legislative prohibition against expending regional center funds to pay for services that are provided by other sources.

2. If claimant is requesting 10 hours of one-on-one ABA services, *in addition to* the 30 hours that she currently receives from Stepping Stones, her request must be denied for failure

¹ All citations are to the Welfare and Institutions Code unless otherwise indicated.

of proof. Claimant did not present evidence establishing that she requires 10 additional hours of one-on-one ABA services. While claimant's pediatrician recommended that claimant continue with one-on-one ABA services, she did not express any opinion regarding the number of hours that claimant needs. Similarly, while the Stepping Stones report from October 2006 established that claimant was benefiting from the program, it did not address the issue of whether claimant requires an additional 10 hours of such services. In fact, it recommended that claimant continue her program at the rate of 30 hours per week.

ORDER

Claimant's appeal is denied.

DATED: _____

DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.